



1 party may serve and file objections to the order within 14 days after being served with a copy  
2 [of the magistrate's order]. A party may not assign as error a defect in the order not timely  
3 objected to.”); *Simpson v. Lear Astronics Corp.*, 77 F.3d 1170, 1174 (9th Cir. 1996); *Philipps*  
4 *v. GMC*, 289 F.3d 1117, 1120-21 (9th Cir. 2002).

5 Notwithstanding the absence of an objection, the Court has reviewed the R&R and  
6 finds that it is well taken. The Court will accept the R&R and dismiss the Petition. *See* 28  
7 U.S.C. § 636(b)(1) (stating that the district court “may accept, reject, or modify, in whole or  
8 in part, the findings or recommendations made by the magistrate”).


9 IT IS THEREFORE ORDERED that the Report and Recommendation of Magistrate  
10 Judge Duncan (Doc. 13) is accepted.

11 IT IS FURTHER ORDERED that Respondents' Motion to Dismiss For Failure to  
12 Satisfy Exhaustion Requirement (Doc. 11) is granted.

13 IT IS FURTHER ORDERED that Petitioner's Petition for Writ of Habeas Corpus  
14 (Doc. 4) is dismissed without prejudice.

15 IT IS FURTHER ORDERED that a Certificate of Appealability is denied because  
16 dismissal of the Petition is justified by a plain procedural bar and jurists of reason would not  
17 find the procedural ruling debatable.

18 DATED this 10<sup>th</sup> day of June, 2011.

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22 Neil V. Wake  
23 United States District Judge  
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